

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSEPH CIAMPI,

Plaintiff,

v.

CITY OF PALO ALTO, et al.,

Defendants.

Case No.: C 09-2655 LHK (PVT)

**ORDER CONTINUING HEARING ON
PLAINTIFF'S MOTION FOR ORDER
TO COMPEL DEFENDANTS TO
PRODUCE AND PROVIDE
DISCOVERY**

(Re: Docket No. 55)

On September 20, 2010, Plaintiff filed a motion to compel Defendants to produce discovery.¹ Defendants opposed the motion. On October 19, 2010, the parties appeared before the court by telephone regarding a dispute which arose during Plaintiff's inspection of certain Taser recordings (and related data), which recordings also appear to be at issue in Plaintiff's pending motion to compel. The court instructed the parties to file supplemental briefs, which they have done. Having reviewed the papers submitted by the parties, the court finds it appropriate to issue this interim order. Based on the briefs and arguments presented,

IT IS HEREBY ORDERED that the parties shall meet and confer with non-party Kustom Signal at the earliest available date regarding setting up a procedure for Plaintiff to inspect and test

¹ The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

1 the Taser video system using Kustom Signal software in the possession of Defendant City of Palo
2 Alto in a manner that will protect Kustom Signal's proprietary rights.

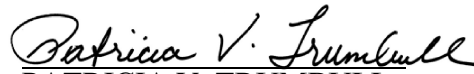
3 Contrary to Defendants' argument, a Rule 34 inspection is not limited to the inspection,
4 copying or sampling of documents. Rule 34 expressly allows a party to "inspect, copy, *test*, or
5 sample . . . any designated tangible things." Plaintiff is thus entitled to request testing of the Taser
6 recording system, including the software used.² Kustom Signal's proprietary rights can be protected
7 through an appropriate protective order.

8 IT IS FURTHER ORDERED that, in the event the parties and Kustom Signal cannot agree
9 on a procedure for Plaintiff to inspect, test and sample the Taser video system using Kustom Signal
10 software, then no later than November 9, 2010, the parties shall submit supplemental briefs setting
11 forth their respective positions regarding what procedure should be used. Kustom Signal may, but
12 need not, file a brief at that time as well.

13 IT IS FURTHER ORDERED that Defendants shall promptly serve a copy of this order on
14 non-party Kustom Signal.

15 IT IS FURTHER ORDERED that the hearing on Plaintiff's motion to compel is
16 CONTINUED to 10:00 a.m. on November 16, 2010.

17 Dated: 10/25/10


PATRICIA V. TRUMBULL
United States Magistrate Judge

27 ² To the extent Plaintiff's prior discovery request do not expressly request such testing,
28 given Plaintiff's pro se status, the court is inclined to either construe his requests broadly to encompass
such a request, or grant leave for Plaintiff to serve such a request on shortened time to meet the
November 5, 2010 discovery cutoff.

Counsel automatically notified of this filing via the court's Electronic Case Filing system.

copies routed to clerks office on 10/25/10 for mailing to:

Joseph Ciampi
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/s/ Donna Kirchner for
OSCAR RIVERA
Courtroom Deputy